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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82448; File No. SR-NYSEArca-2017-131]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201-E**

January 5, 2018.

#### **I. Introduction**

On November 9, 2017, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the Federal Register on November 24, 2017.<sup>3</sup> On December 21, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. On January 4, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1.<sup>4</sup> The Commission has

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See See Securities Exchange Act Release No. 82116 (Nov. 17, 2017), 82 FR 55898.

<sup>4</sup> In Amendment No. 2, the Exchange: (1) corrected the definition for Commodity-Based Trust Shares and supplemented its representations relating to the continued listing requirements applicable to the Units (as defined herein); (2) supplemented its description of the assets other than physical gold and silver bullion that may be held by the Trust;

not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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(3) provided specific information about the ratio of the value of net assets in gold bullion to the value of net assets in silver bullion to be held by the Trust; (4) provided updated information pertaining to the Arrangement (as defined herein); (5) supplemented its description of how the Trust's net asset value ("NAV") will be calculated; (6) provided information about gold and silver certificates; (7) supplemented its description of the U.S. futures exchanges and the Commodities Futures Trading Commission; (8) added a representation that the NAV will be calculated daily and made available to all market participants at the same time, and that the IIV (as defined herein) will be calculated at least every fifteen seconds and made available to all market participants at the same time; (9) specified that the Exchange may obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG (as defined herein) or with which the Exchange has in place a CSSA (as defined herein), including COMEX (as defined herein); (10) specified and confirmed that the Units would trade in all of the Exchange's trading sessions; (11) referenced additional language to be included in the Information Bulletin relating to the possibility that trading spreads and the resulting premium or discount on the Units (as defined herein) may widen as a result of reduced liquidity of gold or silver trading during the Core and Late Trading Sessions after the close of the major world gold and silver markets; and (12) made certain technical, Exchange rule reference, and other conforming corrections. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-131/nysearca2017131-2873835-161766.pdf>.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NYSE Arca Rule 8.201-E(a), the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP"), "Commodity-Based Trust Shares."<sup>5</sup> The Exchange proposes to list and trade shares of the Trust pursuant to NYSE Arca Rule 8.201-E, defined herein and in the Proxy Circular (defined below) as "Units."<sup>6</sup> The Units will be issued in connection with a plan of arrangement under the Alberta Business Corporations Act ("Arrangement") involving Sprott Inc. ("Sprott"), the Trust, Central Fund of Canada Limited ("CFCL") and its shareholders, The Central Group Alberta Ltd. ("CGAL") and its shareholders and 2070140 Alberta Ltd. ("2070140") as described in "Description of the Arrangement" below.

Sprott Asset Management LP will be the sponsor and manager of the Trust ("Manager").<sup>7</sup> RBC Investor Services Trust ("RBC") will be the trustee and valuation agent of the Trust

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<sup>5</sup> The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

<sup>6</sup> This Amendment No. 2 to SR-NYSEArca-2017-131 replaces SR-NYSEArca-2017-131 as originally filed and Amendment 1 thereto and supersedes such filing in its entirety.

<sup>7</sup> The Manager is a limited partnership formed and organized under the laws of the Province of Ontario, Canada, and acts as manager of the Trust pursuant to the trust agreement and the management agreement. The Manager will be responsible for the day-to-day activities and administration of the Trust. The Manager will manage and direct the business and affairs of the Trust. Additional details regarding the Manager are set forth in the Proxy Circular. The Manager has adopted a policy pursuant to which any entity or account that is: (a) managed; or (b) for whom investment decisions are made, directly or indirectly, by a person that is involved in the decision-making process of, or has non-public information about, follow-on offerings of the Trust is prohibited from investing in the Trust, and no such decision-making person is permitted to invest in the Trust for that decision-making person's benefit, directly or indirectly.

(“Trustee” or “Valuation Agent,” as the case may be)<sup>8</sup> and the custodian of the Trust’s assets other than physical gold and silver bullion, comprising principally cash, cash equivalents,<sup>9</sup> government debt obligations and money market mutual funds (“Non-Gold and Silver Custodian”).<sup>10</sup> The Trust will appoint a custodian for the Trust’s physical gold and silver bullion (“Gold and Silver Custodian”).<sup>11</sup> The TSX Trust Company will be the transfer agent of the Trust (“Transfer Agent”).

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2-E(j)(5) and 8.201-E of other precious metals and gold-based commodity trusts,

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<sup>8</sup> RBC is a trust company existing under the laws of Canada. RBC is affiliated with a broker-dealer. RBC has represented to the Exchange that it has put in place and will maintain the appropriate information barriers and controls between itself and the broker-dealer affiliate so that the broker-dealer affiliate will not have access to information concerning the composition and/or changes to the Trust’s holdings that are not available on the Trust’s website. The Trustee will hold title to the Trust’s assets on behalf of the unitholders of the Trust (“Unitholders”) and will have exclusive authority over the assets and affairs of the Trust. The Trustee has a fiduciary responsibility to act in the best interest of the Unitholders. Additional details regarding the Trustee are set forth in the Proxy Circular.

<sup>9</sup> See, note 27, *infra*.

<sup>10</sup> According to the Proxy Circular, the Non-Gold and Silver Custodian will be responsible for the safekeeping of all of the assets of the Trust, other than physical gold and silver bullion, delivered to it and will act as the custodian of such assets. The Manager, in accordance with applicable law and with the consent of the Trustee, will have the authority to change the custodial arrangement including, but not limited to, the appointment of a replacement custodian and/or additional custodians. Additional details regarding the Non-Gold and Silver Custodian are set forth in the Proxy Circular.

<sup>11</sup> According to the Proxy Circular, the Trust’s physical gold and silver bullion will be fully allocated and stored with the Gold and Silver Custodian or a sub-custodian of the Gold and Silver Custodian. The Gold and Silver Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust’s physical gold and silver bullion that is in its or its sub-custodian’s custody, subject to certain limitations based on events beyond the Gold and Silver Custodian’s control. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. Additional details regarding the Gold and Silver Custodian are set forth in the Proxy Circular.

including: Merk Gold Trust;<sup>12</sup> ETFS Gold Trust;<sup>13</sup> ETFS Platinum Trust;<sup>14</sup> ETFS Palladium Trust;<sup>15</sup> APMEX Physical-1 oz. Gold Redeemable Trust;<sup>16</sup> Sprott Gold Trust;<sup>17</sup> iShares Silver Trust;<sup>18</sup> iShares COMEX Gold Trust;<sup>19</sup> and Long Dollar Gold Trust.<sup>20</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange<sup>21</sup> and listing of iShares COMEX Gold Trust and iShares Silver Trust on the

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<sup>12</sup> See, Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137).

<sup>13</sup> See, Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

<sup>14</sup> See, Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95).

<sup>15</sup> See, Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR-NYSEArca-2009-94).

<sup>16</sup> See, Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18).

<sup>17</sup> See, Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113).

<sup>18</sup> See, Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust).

<sup>19</sup> See, Securities Exchange Act Release No.56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

<sup>20</sup> See, Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

<sup>21</sup> See, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE).

American Stock Exchange LLC.<sup>22</sup> In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.<sup>23</sup>

The Exchange represents that the Units satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.<sup>24</sup>

### **Description of the Arrangement**

CFCL is a passive, non-operating, specialized investment holding company organized under the laws of the Province of Alberta, which buys and holds almost entirely pure refined gold and silver bullion, primarily in international bar form. The issued and outstanding share capital of CFCL consists of common shares (“CFCL Common Shares”) and Class A non-voting shares (“CFCL Class A Shares”). The CFCL Class A Shares are listed for trading on the Toronto Stock Exchange (“TSX”) under the symbols “CEF.A” (Cdn.\$) and “CEF.U” (U.S.\$), and on the NYSE American under the symbol “CEF.” CFCL is a “foreign private issuer,” as defined in Rule 3b-4 under the Exchange Act.

According to the Manager, under the Arrangement, the Trust will acquire all the assets and assume all the liabilities of CFCL (other than CFCL’s administration agreement), in exchange for that number of fully paid and non-assessable Units as is equal to the aggregate

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<sup>22</sup> See, Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

<sup>23</sup> See, Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

<sup>24</sup> With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Exchange Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

number of CFCL Class A Shares and CFCL Common Shares issued and outstanding immediately prior to the effective time of the Arrangement. The CFCL Common Shares and the common shares of 2070140 will be acquired by Sprott in exchange for, among other things, cash consideration of \$105 million Canadian dollars and 6,997,379 common shares of Sprott. CFCL will then promptly redeem and cancel the outstanding CFCL Class A Shares and the CFCL Common Shares and distribute to the former holders thereof one Unit for each such share held.

Approval of holders of two-thirds of the issued and outstanding CFCL Class A Shares and of the issued and outstanding CFCL Common Shares each voting as a separate class, as well as a majority of uninterested (in the transaction) holders of the issued and outstanding CFCL Class A Shares and of the issued and outstanding CFCL Common Shares, each voting as a separate class, is required to effect the Arrangement.<sup>25</sup> Requisite shareholder approvals were obtained at a meeting of such shareholders held on November 30, 2017. In addition, on December 5, 2017, at a hearing before the Court of Queen's Bench Alberta (Calgary) ("Court") at which any holder of CFCL Class A Shares and CFCL Common Shares had the right to appear, the Court passed upon the substantive and procedural fairness of the terms and conditions of the Arrangement to holders of CFCL Class A Shares and CFCL Common Shares and as such, the distribution of Units to the holders of the CFCL Class A Shares will be exempt from registration under the Securities Act of 1933, as amended ("Securities Act") pursuant to Section 3(a)(10) thereof, which exempts the issuance of any securities issued in exchange for one or more bona fide outstanding securities from the general requirement of registration where the terms and

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<sup>25</sup> In connection therewith, CFCL prepared and mailed a proxy circular, dated October 26, 2017 ("Proxy Circular"), soliciting such approval at the meeting of such holders to be held on November 30, 2017, unless adjourned or postponed. The Proxy Circular was furnished by CFCL to the Commission (File No. 001-09038) on November 8, 2017, under cover of Form 6-K. The descriptions of the Trust and the Units contained herein are based, in part, on the Proxy Circular.

conditions of the issuance and exchange of such securities have been approved by a court of competent jurisdiction, after a hearing upon the fairness of the terms and conditions of such issuance and exchange at which all persons to whom it is proposed to issue the securities have the right to appear and receive timely notice thereof.

The CFCL Class A Shares are registered under Section 12(b) of the Exchange Act, based upon a listing of the CFCL Class A Shares on the NYSE American. Pursuant to Rule 12g-3(a) under the Exchange Act, the Units will “succeed” to the Section 12(b) Exchange Act registration of the CFCL Class A Shares upon completion of the Arrangement. In order to change the Section 12(b) registration of the Units from one based upon a listing on the NYSE American to one based upon a listing on the NYSE Arca, the Trust will file a separate initial registration statement on Form 8-A under the Exchange Act to register the Units under the Exchange Act based upon a listing of the Units on the NYSE Arca.

After completion of the Arrangement, the Trust will furnish current reports to the Commission on Form 6-K in accordance with Rules 13a-1 and/or 13a-3 under the Exchange Act. The Trust will also file with the Commission annual reports on Form 40-F under the Canada/U.S. Multijurisdictional Disclosure System. Information included in such filings (and which will be made available to Unitholders) will include (i) annual information form, (ii) annual financial statements, (iii) annual management report on fund performance (“MRFP”), (iv) quarterly financial statements, (v) quarterly MRFP and (vi) report of independent review committee.

### **Operation of the Trust**

According to the Proxy Circular, the investment objective of the Trust is to participate in the Arrangement and to subsequently invest and hold substantially all of its assets in physical



gold and silver bullion.<sup>26</sup> The Trust is authorized to issue an unlimited number of Units in an unlimited number of classes and series of a class. Each Unit of a class or series of a class represents an undivided ownership interest in the net assets of the Trust attributable to that class or series of a class of Units.

The Trust seeks to provide a secure, convenient and exchange-traded investment alternative for investors interested in holding physical gold and silver bullion without the inconvenience that is typical of a direct investment in physical gold and silver bullion. The Trust will invest primarily in long-term holdings of unencumbered, fully allocated, physical gold and silver bullion and will not speculate with regard to short-term changes in gold and silver prices. Pursuant to the trust agreement, the Manager has full authority and exclusive power to manage and direct the business and affairs of the Trust, subject to the Trust's investment and operating restrictions.<sup>27</sup> According to the Manager, the Trust will not invest in gold or silver certificates<sup>28</sup>

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<sup>26</sup> The Trust has obtained exemptive relief from the Canadian securities regulatory authorities for relief from certain requirements of National Instrument 81-102—*Investment Funds*, legislation which governs mutual funds and non-redeemable investment funds in each of the provinces and territories of Canada (“Exemptive Relief”), to permit: (i) the Trust to invest up to 100% of its assets in physical gold or silver bullion; (ii) the appointment of the Gold and Silver Custodian as custodian of the Trust's physical gold or silver bullion assets, if required; (iii) purchases of Units on the Exchange and the TSX and redemption requests to be submitted directly to the registrar and Transfer Agent of the Trust; (iv) the redemption of Units and payment upon redemption of Units all as described under “Redemption for Physical Gold and Silver” and “Redemption of Units for Cash”; and (v) the Trust to establish a record date for distributions in accordance with the policies of the TSX and the Exchange.

<sup>27</sup> The Trust's investment and operating restrictions provide that the Trust will invest in and hold a minimum of 90% of the total net assets of the Trust in physical gold and silver bullion in “London Good Delivery” bar (as defined in “Operation of the Gold and Silver Markets” below) form and hold no more than 10% of the total net assets of the Trust, at the discretion of the Manager, in (i) physical gold and silver bullion (in London Good Delivery bar form or otherwise), (ii) gold or silver coins, (iii) debt obligations of or guaranteed by the Government of Canada or a province of Canada or by the Government of the United States or a state thereof (each, a “Government”), (iv) money market mutual funds, (v) interest-bearing accounts, (vi) cash and (vii) the following short-term

(other than legacy gold and silver certificates previously held by CFCL which historically represent less than 1% of CFCL's assets, and which will be sold for cash as soon as practicable following the completion of the Arrangement) or other financial instruments that represent gold or silver or that may be exchanged for gold or silver and will not purchase, sell or hold derivatives. The Trust does not anticipate making regular cash distributions to Unitholders. According to the Manager, the value of gold bullion is currently approximately 2/3, and the value of silver bullion is currently approximately 1/3, of CFCL's net assets. It is the intention of the Trust, subject to the discretion of the Manager, to maintain a ratio of the value of net assets in gold bullion to the value of net assets in silver bullion at approximately 2/3 to 1/3. It does not expect that its investment in either gold bullion or silver bullion would be less than 15% to 20% of its net assets on a long-term basis. However, changes in the relative prices of gold and silver bullion, redemptions or other events beyond the control of the Manager could cause the relative investments in gold and silver bullion to vary from these percentages.

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instruments: short-term commercial paper obligations of a corporation or other person whose short-term commercial paper is rated R-1 (or its equivalent, or higher) by Dominion Bond Rating Service Limited or its successors or assigns or F1 (or its equivalent, or higher) by Fitch Ratings or its successors or assigns or A-1 (or its equivalent, or higher) by Standard & Poor's or its successors or assigns or P-1 (or its equivalent, or higher) by Moody's Investor Service or its successors or assigns short-term certificates of deposit issued or guaranteed by a Canadian chartered bank or trust company, short-term government debt, short-term investment grade corporate debt or other short-term debt obligations approved by the Manager from time to time (for the purpose of this paragraph, the term "short-term" means having a date of maturity or call for payment not more than 182 days from the date on which the investment is made) (such short-term instruments, "cash equivalents"), except during the 60-day period following the closing of additional offerings or prior to the distribution of the assets of the Trust. Pursuant to the Exemptive Relief, the Trust is permitted to invest up to 100% of its net assets, taken at market value of the time of purchase, in physical gold and silver bullion.

<sup>28</sup> Gold or silver certificates are financial instruments representing a promissory claim for gold or silver bullion, which may be exchanged for physical gold or silver bullion held by a custodian.

According to the Proxy Circular, the Trust is neither an investment company registered or required to be registered under the Investment Company Act of 1940, as amended,<sup>29</sup> nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”),<sup>30</sup> and neither the Manager nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the operation of the Trust.

### **Operation of the Gold and Silver Markets**

According to the Proxy Circular, the global trade in gold and silver consists of over-the-counter (“OTC”), transactions in spot, forwards and options and other derivatives, together with exchange-traded futures and options. The participants in the world gold market may be classified in the following sectors: the mining and producer sector; the banking sector; the official sector; the investment sector; and the manufacturing sector. The participants in the world silver industry may be classified by the following sectors: the mining and producer sector; the banking sector; the investment sector; the fabrication and manufacturing sector; and the official sector.

According to the Proxy Circular, the OTC gold market and OTC silver market include spot, forward and option and other derivative transactions conducted on a principal-to-principal basis. While the OTC gold market and the OTC silver market are global, nearly 24-hour per day markets, the main centers for both OTC markets are London, New York and Zurich. Thirteen members of the London Bullion Market Association (“LBMA”), the London-based trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market, act as OTC market makers for both the OTC gold market and the OTC silver market, and most OTC market trades for both markets are

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<sup>29</sup> 15 U.S.C. 80a-1.

<sup>30</sup> 17 U.S.C. 1.

cleared through London.<sup>31</sup> The LBMA plays an important role in setting OTC gold and OTC silver trading industry standards. The LBMA's "London Good Delivery Lists" identify approved refiners of gold and silver.

According to the Proxy Circular, in the OTC gold market and the OTC silver market, gold and silver that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA-acceptable refiner) and appearance set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA are "London Good Delivery" bars. A gold London Good Delivery bar must contain between 350 and 430 fine troy ounces of gold with a minimum fineness of 995 parts per 1,000. A silver London Good Delivery bar must contain between 750 ounces and 1,100 ounces of silver with a minimum fineness of 999 parts per 1,000.

According to the Proxy Circular, the most significant gold and silver futures exchanges are the COMEX, operated by Commodities Exchange, Inc. ("COMEX"), a subsidiary of New York Mercantile Exchange, Inc. ("NYMEX"), and a subsidiary of CME Group Inc. ("CME Group"),<sup>32</sup> and the Tokyo Commodity Exchange. U.S. futures exchanges are registered with the Commodities Futures Trading Commission and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps.

### **Initial Distribution and Redemption of Units**

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<sup>31</sup> Following the enactment of the Financial Markets Act 2012, the Prudential Regulation Authority of the Bank of England is responsible for regulating most of the financial firms that are active in the bullion market, and the Financial Conduct Authority is responsible for consumer and competition issues.

<sup>32</sup> CME Group is a member of the Intermarket Surveillance Group ("ISG"). See note 39, infra.

According to the Proxy Circular, 252,156,003 Units are expected to be issued in connection with the Arrangement. Each outstanding Unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the Units. The Trust will not issue additional Units of the class offered in the Arrangement following the completion of the Arrangement except: (i) if the net proceeds per Unit to be received by the Trust are not less than 100% of the most recently calculated net asset value (“NAV”) per Unit immediately prior to, or upon, the determination of the pricing of such issuance; or (ii) by way of distribution of Units in connection with an income distribution. According to the Manager, the Trust does not intend to issue new Units, or redeem existing Units, on a day-to-day basis.

Units may be redeemed at the option of the Unitholder on a monthly basis for physical gold and silver bullion or cash, as described below.

#### Redemption for Physical Gold and Silver

According to the Manager, subject to the terms of the trust agreement, a Unitholder may redeem Units for physical gold and silver bullion, provided the redemption request is for the Minimum Bullion Redemption Amount. “Minimum Bullion Redemption Amount” means 100,000 Units, provided that if 100,000 Units is not at least equivalent to the aggregate value of (i) one London Good Delivery bar of gold, (ii) the Proportionate Silver Amount (as defined below) and (iii) applicable expenses, the Minimum Bullion Redemption Amount shall be such number of Units as are at least equivalent to the aggregate value of (a) one London Good Delivery bar of gold, (b) the Proportionate Silver Amount and (c) applicable expenses.

“Proportionate Silver Amount” means such number of London Good Delivery bars of silver with an aggregate value (as at the valuation time on the applicable redemption date in the month during which the redemption request is processed) that is proportionate to the aggregate value of

one London Good Delivery bar of gold based on the proportionate value of physical gold and silver bullion held by the Trust (as at the valuation time on the applicable redemption date in the month during which the redemption request is processed). Units redeemed for physical gold and silver bullion will have a redemption value equal to the aggregate value of the NAV per Unit of the redeemed Units on the last day of the month on which the Exchange is open for trading in the month during which the redemption request is processed (less applicable expenses described below) (“Redemption Amount”).

The amount of physical gold and silver bullion a redeeming Unitholder is entitled to receive will be determined by the Manager, who will allocate the Redemption Amount to physical gold and silver bullion in direct proportion to the value of physical gold and silver bullion held by the Trust at the time of redemption (“Bullion Redemption Amount”). The quantity of each particular metal delivered to a redeeming Unitholder will be dependent on the applicable Bullion Redemption Amount and the number and individual weight of London Good Delivery bars of that metal that are held by the Trust on the redemption date. A redeeming Unitholder may not receive physical gold and silver bullion in the proportions then held by the Trust and, if the Trust does not have a London Good Delivery bar of a particular metal in inventory of a value equal to or less than the applicable Bullion Redemption Amount, the redeeming Unitholder will not receive any of that metal. The ability of a Unitholder to redeem Units for physical gold and silver bullion may be limited by the number of London Good Delivery bars held by the Trust at the time of redemption. Any Bullion Redemption Amount in excess of the value of the London Good Delivery bar or an integral multiple thereof of the particular metal to be delivered to the redeeming Unitholder will be paid in cash, as such excess

amount will not be combined with any excess amounts in respect of the other metal for the purpose of delivering additional physical gold and silver bullion.

A Unitholder that owns a sufficient number of Units who desires to exercise redemption privileges for physical gold and silver bullion must do so by instructing his, her or its broker, who must be a direct or indirect participant of CDS Clearing and Depository Services Inc. or The Depository Trust Company, to deliver to the Transfer Agent on behalf of the Unitholder a written notice (“Bullion Redemption Notice”) of the Unitholder’s intention to redeem Units for physical gold and silver bullion. Pursuant to the Exemptive Relief, the Transfer Agent is permitted to directly accept redemption requests. A Bullion Redemption Notice must be received by the Transfer Agent no later than 4:00 p.m., Eastern Time (“E.T.”), on the 15<sup>th</sup> day of the month in which the Bullion Redemption Notice will be processed or, if such day is not a business day, then on the immediately following day that is a business day. Any Bullion Redemption Notice received after such time will be processed in the next month.

A Unitholder redeeming Units for physical gold and silver bullion will receive the physical gold and silver bullion from the Gold and Silver Custodian. Physical gold and silver bullion received by a Unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier pursuant to delivery instructions provided by the Unitholder to the Manager, provided that the delivery instructions are acceptable to the armored transportation service carrier. The armored transportation service carrier will be engaged by or on behalf of, and the costs in connection therewith, will be borne by the redeeming Unitholder. Such physical gold and silver bullion can be delivered: (i) to an account established by the Unitholder at an institution located in North America authorized to accept and hold London Good Delivery bars; (ii) in the United States, to any physical address (subject to approval by the

armored transportation service carrier); (iii) in Canada, to any business address (subject to approval by the armored transportation service carrier); and (iv) outside of the United States and Canada, to any address approved by the armored transportation service carrier. Physical gold and silver bullion delivered to an institution located in North America authorized to accept and hold London Good Delivery bars will likely retain its London Good Delivery status while in the custody of such institution; physical gold and silver bullion delivered pursuant to a Unitholder's delivery instruction to a destination other than an institution located in North America authorized to accept and hold London Good Delivery bars will no longer be deemed London Good Delivery once received by the Unitholder. Costs associated with the redemption of Units and the delivery of physical gold and silver bullion will be borne by the redeeming Unitholder.

The armored transportation service carrier will receive physical gold and silver bullion in connection with a redemption of Units approximately 10 business days after the end of the month in which the Bullion Redemption Notice is processed. Once the physical gold and silver bullion representing the redeemed Units has been placed with the armored transportation service carrier, the Gold and Silver Custodian will no longer bear the risk of loss of, and damage to, such physical gold and silver bullion. In the event of a loss after the physical gold and silver bullion has been placed with the armored transportation service carrier, the Unitholder will not have recourse against the Trust or the Gold and Silver Custodian.

#### Redemption of Units for Cash

According to the Proxy Circular, Unitholders whose Units are redeemed for cash will be entitled to receive a redemption price per Unit equal to 95% of the lesser of: (i) the volume-weighted average trading price of the Units traded on the Exchange or, if trading has been



suspended on the Exchange, the trading price of the shares traded on the TSX,<sup>33</sup> for the last five days on which the respective exchange is open for trading for the month in which the redemption request is processed; and (ii) the NAV of the redeemed Units as of 4:00 p.m., E.T., on the last day of such month on which the Exchange is open for trading. Pursuant to the Exemptive Relief, the redemption price will be permitted to be less than 100% of the NAV per Unit. Cash redemption proceeds will be transferred to a redeeming Unitholder approximately three business days after the end of the month in which such redemption request is processed by the Trust.

To redeem Units for cash, a Unitholder must instruct the Unitholder's broker to deliver a notice to redeem Units for cash ("Cash Redemption Notice") to the Transfer Agent. The Transfer Agent is permitted to directly accept redemption requests. A Cash Redemption Notice must be received by the Transfer Agent no later than 4:00 p.m., E.T., on the 15<sup>th</sup> day of the month in which the Cash Redemption Notice will be processed or, if such day is not a business day, then on the immediately following day that is a business day. Any Cash Redemption Notice received after such time will be processed in the next month.

### **Net Asset Value**

According to the Proxy Circular, the Valuation Agent will calculate the NAV for each class of Units as of 4:00 p.m., E.T., on each business day. The NAV as of the valuation time on each business day will be the amount obtained by deducting from the aggregate fair market value of the assets of the Trust as of such date an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units, if any) as of such date.<sup>34</sup> The

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<sup>33</sup> The Exchange can receive information regarding transactions on TSX through the Investment Industry Regulatory Organization of Canada, which is a member of the ISG. See note 39, *infra*.

<sup>34</sup> According to the Manager, the Trust is a mutual fund under applicable Canadian securities legislation and must calculate its NAV pursuant to Part 14 of National

NAV per Unit will be determined by dividing the NAV of the Trust on a date by the total number of Units then outstanding on such date. According to the Manager, the fair market value of the assets of the Trust will be determined as follows:

- (i) the value of physical gold and silver bullion will be its market value based on the price provided by a widely recognized pricing service as directed by the Manager and, if such service is not available, such physical gold and silver bullion will be valued at prices provided by another pricing service as determined by the Manager, in consultation with the Valuation Agent;
- (ii) the value of any cash on hand or on deposit (including interest-bearing accounts), accounts receivable, prepaid expenses, prepaid assets and interest accrued and not yet received, will be deemed to be the full amount thereof unless the Manager determines that any such deposit, account receivable, prepaid expense, prepaid asset or interest is not worth the full amount thereof, in which event the value thereof will be deemed to be such value as the Manager determines to be the fair value thereof;
- (iii) the value of any cash equivalents will be at their cost plus accrued interest;

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Instrument 81-106—*Investment Fund Continuous Disclosure* (“NI 81-106”), a rule applicable to Canadian investment funds and administered by Canadian securities regulatory authorities. Pursuant to Subsection 14.2(1) of NI 81-106, the Trust must subtract the “fair value” of its liabilities from the fair value of its assets when calculating its NAV. Subsection 14.2(1.2) of NI 81-106 defines fair value as (a) the market value based on reported prices and quotations in an active market; or (b) if the market value is not available, or the Manager believes that it is unreliable, a value that is fair and reasonable in all the relevant circumstances, and requires the Manager to establish and maintain appropriate written policies and procedures for determining fair value of the Trust’s assets and liabilities and to consistently follow those policies and procedures.

- (iv) the value of any debt instruments (including obligations of or guaranteed by a Government) for which active markets exist (other than cash equivalents), and money market mutual funds, will be at the quoted value thereof;
- (v) the value of any assets for which no price quotations are available or, in the opinion of the Manager (which may delegate such responsibility to the Valuation Agent under the valuation services agreement), to which the above valuation principles cannot or should not be applied, will be the fair value thereof determined from time to time in such manner as the Manager (or the Valuation Agent, as the case may be) will from time to time provide; and
- (vi) the value of all assets and liabilities of the Trust valued in terms of a currency other than the currency used to calculate the NAV will be converted to the currency used to calculate the NAV by applying the rate of exchange obtained from the best available sources to the Valuation Agent as agreed upon by the Manager including, but not limited to, the Trustee or any of its affiliates.

### **Secondary Market Trading**

According to the Proxy Circular, Units may trade in the market at a premium or discount to the NAV per Unit. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the COMEX and the Exchange and the TSX. According to the Proxy Circular, while the Units will trade on the Exchange during the Early, Core and Late Trading Sessions as specified in NYSE Arca Rule 7.34-E(a), liquidity in the global gold and silver markets will be reduced after the close of the COMEX at 1:30 p.m., E.T. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV, may widen.

### **Availability of Information Regarding Gold and Silver**

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold or silver, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the quotation and last sale price for the Units, as is the case for all equity securities traded on the Exchange. In addition, there is a considerable amount of gold and silver price and gold and silver market information available on public websites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold or silver pricing information based on the spot price for an ounce of gold or silver from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold and silver and last sale prices of gold and silver futures, as well as information about news and developments in the gold and silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold and silver prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold and silver, as well as a feed of real-time streaming prices, delivered as record-based digital data from the EBS platform to its customer's market data platform via Bloomberg or Reuters.

Complete real-time data for gold and silver futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on gold and silver, ranging from those specializing in precious metals to sites maintained by

major newspapers. In addition, the LBMA Gold Price and the LBMA Silver Price are publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

### **Availability of Information**

The intra-day indicative value (“IIV”) per Unit will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold and silver held by the Trust and a price of gold and silver derived from updated bids and offers indicative of the spot prices of gold and silver.<sup>35</sup>

The IIV will be widely disseminated on a per Unit basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the mid-point of the bid/ask price<sup>36</sup> at the close of trading in relation to the NAV as of the time the NAV is calculated (“Bid/Ask Price”) and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Trust, if shorter). The Trust website will provide the last sale price of the Units as traded in the U.S. market, as well as a breakdown, provided on a daily basis, of the holdings of the Trust by metal type. The website for the Trust will also provide the information described in the penultimate paragraph of “Description of the Arrangement” above.

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<sup>35</sup> The IIV on a per Unit basis disseminated during the NYSE Arca Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day.

<sup>36</sup> The bid/ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

The Trust's daily (or as determined by the Manager in accordance with the trust agreement) NAV will be posted on the Trust's website as soon as practicable. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV per Unit from the previous day.

### **Criteria for Initial and Continued Listing**

The Trust will be subject to the criteria in NYSE Arca Rule 8.201-E, including 8.201-E(e), for initial and continued listing of the Units.

A minimum of 100,000 Units will be required to be outstanding at the start of trading. The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity. The Trust represents that the NAV will be calculated daily and made available to all market participants at the same time. The Trust also represents that the IIV will be calculated at least every fifteen seconds and made available to all market participants at the same time.

### **Trading Rules**

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur during the Early, Core and Late Trading Sessions as specified in NYSE Arca Rule 7.34-E(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered Market Makers in the Units to facilitate surveillance. Pursuant to NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold and silver and related futures or options on futures or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material, nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures and any related derivative instruments (including the Units).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) the extent to which conditions in the underlying gold or silver market have caused disruptions and/or lack of trading; or (2) whether

other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>37</sup>

The Exchange will halt trading in the Units if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

### **Surveillance**

The Exchange represents that trading in the Units will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>38</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When

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<sup>37</sup> See NYSE Arca Rule 7.12-E.

<sup>38</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.



such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Units with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Units from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Units from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).<sup>39</sup> The Exchange may obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA, including COMEX.

Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Units and the underlying gold and silver and related futures or options on futures or any other related derivatives through ETP Holders acting as registered Market Makers, in connection with such ETP Holders’ proprietary or customer trades through ETP Holders which they effect on any relevant market.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets and (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Units on the Exchange.

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<sup>39</sup> For the list of current members of ISG, see <https://www.isgportal.org/home.html>.

The Manager has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

### **Information Bulletin**

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an “Information Bulletin” of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) redemptions of Units; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) how information regarding the IIV is disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold or silver trading during the Core and Late Trading Sessions after the close of the major world gold and silver markets; and (5) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the Proxy Circular. The Information Bulletin will disclose that information about the Units of the Trust is publicly available on the Trust’s website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Exchange Act.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>40</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Units will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Units with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Units from such markets. In addition, the Exchange may obtain information regarding trading in the Units from markets that are members of ISG or with which the Exchange has in place a CSSA. The Exchange may obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA, including COMEX. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Units and the underlying gold and silver through ETP Holders acting as registered Market Makers, in

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<sup>40</sup> 15 U.S.C. 78f(b)(5).

connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. There is a considerable amount of gold and silver price and gold and silver market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold or silver pricing information based on the spot price for an ounce of gold or silver from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold and silver and last sale prices of gold and silver futures, as well as information about news and developments in the gold and silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold and silver prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold and silver, as well as a feed of real-time streaming prices, delivered as record-based digital data from the EBS platform to its customer's market data platform via Bloomberg or Reuters.

Complete real-time data for gold and silver futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on gold and silver, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price and LBMA Silver Price are publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

The Trust's daily (or as determined by the Manager in accordance with the trust agreement) NAV will be posted on the Trust's website as soon as practicable. The Trust's website will provide an IIV per Unit, as calculated by a third party financial data provider during the Exchange's Core Trading Session.

Quotation and last-sale information regarding the Units will be disseminated through the facilities of the Consolidated Tape Association. The IIV will be widely disseminated on a per Unit basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants. The NAV per Unit will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Trust on a daily basis information with respect to the recent NAV per Unit and Units outstanding.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Units and may obtain

information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. The Exchange may obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA, including COMEX. In addition, as noted above, investors will have ready access to information regarding gold and silver pricing and gold and silver futures information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold and silver.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposed rule change, as modified by Amendment No. 2, to list and trade the Units is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>41</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>42</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove

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<sup>41</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange has represented that gold and silver futures trade on markets that are regulated by the Commodities Futures Trading Commission and that the Exchange will be able to share surveillance information with one of the “most significant” markets for gold and silver futures.<sup>43</sup> The Commission has previously approved the listing and trading of other gold- and silver-based commodity trusts, noting the existence of surveillance-sharing agreements between the listing exchange and significant, regulated markets for gold and silver futures,<sup>44</sup> and the Commission finds that the Exchange will be able to share surveillance information with a significant, regulated market for trading futures on gold and silver.

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<sup>43</sup> Specifically, the Exchange represents that the most significant gold and silver futures exchanges are the COMEX, operated by Commodities Exchange, Inc., a subsidiary of NYMEX and a subsidiary of CME Group, and that it may obtain information regarding trading in gold and silver futures from markets that are members of ISG or with which the Exchange has in place a CSSA, including COMEX. See Amendment No. 2, supra note 4, at 11, 20. The Exchange also represents that the U.S. futures exchanges are registered with the Commodities Futures Trading Commission. See Amendment No. 2, supra note 4, at 11.

<sup>44</sup> See, e.g., iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754 (Jan. 26, 2005) (SR-Amex-2004-38) (approval order notes the American Stock Exchange's representation that “the most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange” and that the American Stock Exchange has “in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts”); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973 (Mar. 24, 2006) (SR-Amex-2005-72) (approval order notes the American Stock Exchange's representation that “the most significant silver futures exchanges are the COMEX and the Tokyo Commodity Exchange” and that the American Stock Exchange has “in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts”).

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>45</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale price of the Units will be disseminated over the Consolidated Tape.

The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately. NYSE Arca Rule 8.201-E(e)(2)(v) requires that an IIV (which is referred to in the rule as the “Indicative Trust Value”) be calculated and disseminated at least every 15 seconds. The IIV per Unit will be calculated based on the amount of gold and silver held by the Trust and a price of gold and silver derived from updated bids and offers indicative of the spot prices of gold and silver. The IIV will be widely disseminated on a per Unit basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.<sup>46</sup>

Additionally, the Valuation Agent will calculate the NAV for each class of Units as of 4:00 p.m., E.T., on each business day.<sup>47</sup> The website for the Trust will contain the following information: (a) the mid-point of the Bid/Ask Price and a calculation of the premium or discount of such price against the NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. According to the Exchange, the Trust’s website also

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<sup>45</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>46</sup> See Amendment No. 2, supra note 4, at 17.

<sup>47</sup> See id. at 14.



will provide the last sale price of the Units as traded in the U.S. market, as well as a breakdown, provided on a daily basis, of the holdings of the Trust by metal type. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices, and NAV per Unit from the previous day.<sup>48</sup>

According to the Exchange, investors may obtain on a 24-hour basis gold or silver pricing information based on the spot price for an ounce of gold or silver from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold and silver and last sale prices of gold and silver futures, as well as information about news and developments in the gold and silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold and silver prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold and silver, as well as a feed of real-time streaming prices, delivered as record-based digital data from the EBS platform to its customer's market data platform via Bloomberg or Reuters.<sup>49</sup>

In addition, the Exchange notes that complete real-time data for gold and silver futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on gold and silver, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the Exchange represents

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<sup>48</sup>     See id. at 17.

<sup>49</sup>     See id. at 16, 22.

that the LBMA Gold Price and the LBMA Silver Price are publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).<sup>50</sup>

The Commission also believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) the extent to which conditions in the underlying gold or silver market have caused disruptions or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>51</sup> The Exchange will halt trading in the Units if the NAV of the Trust is not calculated or disseminated daily or if not made available to all participants at the same time.<sup>52</sup> If the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.<sup>53</sup> The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV; if the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>54</sup>

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<sup>50</sup> See id. at 17, 22.

<sup>51</sup> See id. at 19.

<sup>52</sup> See id.

<sup>53</sup> See id. at 19, 22.

<sup>54</sup> See id.

Additionally, the Commission notes that market makers in the Units would be subject to the requirements of NYSE Arca Rule 8.201-E(g), which allow the Exchange to ensure that they do not use their positions to violate the requirements of Exchange rules or applicable federal securities laws.<sup>55</sup>

In support of this proposal, the Exchange has made the following additional representations:

- (1) The Trust will be subject to the criteria in NYSE Arca Rule 8.201-E, including 8.201-E(e), for initial and continued listing of the Units.<sup>56</sup>
- (2) The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.<sup>57</sup>
- (3) The Exchange deems the Units to be equity securities.<sup>58</sup>
- (4) The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>59</sup>
- (5) Trading in the Units will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered

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<sup>55</sup> Commentary .04 of NYSE Arca Equities Rule 11.3 requires that an ETP Holder acting as a registered market maker in the Units, and its affiliates, establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

<sup>56</sup> See Amendment No. 2, *supra* note 4, at 18.

<sup>57</sup> Trading in the Units on the Exchange will occur during the Early, Core, and Late Trading Sessions as specified in NYSE Arca Rule 7.34-E(a). See *id.* at 16, 18.

<sup>58</sup> See *id.* The Commission notes that, as a result, trading of the Units will be subject to the Exchange's existing rules governing the trading of equity securities.

<sup>59</sup> See *id.* at 20.

by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>60</sup>

- (6) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Units with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Units from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Units from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>61</sup> The Exchange also may obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA, including COMEX.<sup>62</sup>
- (7) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (a) redemptions of Units; (b) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts

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<sup>60</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See id. at 19, n. 36.

<sup>61</sup> See id. at 20.

<sup>62</sup> See id. at 20, 21, 23.

relating to every customer prior to trading the Units; (c) how information regarding the IIV is disseminated; (e) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold or silver trading during the Core and Late Trading Sessions after the close of the major world gold and silver markets; and (e) trading information.<sup>63</sup>

- (8) The Trust's investment and operating restrictions provide that the Trust will invest in and hold a minimum of 90% of its total net assets in physical gold and silver bullion in "London Good Delivery" bar form, and hold no more than 10% of the total net assets of the Trust, at the discretion of the Manager, in: (i) physical gold and silver bullion (in London Good Delivery bar form or otherwise); (ii) gold or silver coins; (iii) debt obligations of or guaranteed by a Government; (iv) money market mutual funds; (v) interest-bearing accounts; (vi) cash; and (vii) cash equivalents, except during the 60-day period following the closing of additional offerings or prior to the distribution of the assets of the Trust.<sup>64</sup>
- (9) According to the Manager, the value of gold bullion is currently approximately 2/3, and the value of silver bullion is currently approximately 1/3, of CFCL's net assets. It is the intention of the Trust, subject to the discretion of the Manager, to maintain a ratio of the value of net assets in gold bullion to the value of net assets in silver bullion at approximately 2/3 to 1/3. It does not expect that its investment in either gold bullion or silver bullion would be less than 15% to 20% of its net assets on a long-term basis. However, changes in the relative prices of gold and

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<sup>63</sup> See id. at 20-21.

<sup>64</sup> See id. at 9.

silver bullion, redemptions or other events beyond the control of the Manager could cause the relative investments in gold and silver bullion to vary from these percentages.<sup>65</sup>

- (10) According to the Manager, the Trust will not invest in gold or silver certificates (other than legacy gold and silver certificates previously held by CFCL which historically represent less than 1% of CFCL's assets, and which will be sold for cash as soon as practicable following the completion of the Arrangement) or other financial instruments that represent gold or silver or that may be exchanged for gold or silver, and will not purchase, sell, or hold derivatives.<sup>66</sup>
- (11) All statements and representations made in this filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets, and (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Units on the Exchange.<sup>67</sup>
- (12) The Manager has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not

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<sup>65</sup> See id. at 10.

<sup>66</sup> See id. at 10.

<sup>67</sup> See id. at 20.

in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).<sup>68</sup>

- (13) A minimum of 100,000 Units will be required to be outstanding at the start of trading.

This approval order is based on all of the Exchange’s representations – including those set forth above and in Amendment No. 2 – and the Exchange’s description of the Trust.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act<sup>69</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-131 on the subject line.

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<sup>68</sup> See *id.* The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (Apr. 1, 2016), 81 FR 20428, 20432 (Apr. 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>69</sup> 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-131 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice of Amendment



No. 2 in the Federal Register. Amendment No. 2 supplements the proposal by providing additional information regarding, among other things: (1) the Trust's primary holdings in gold and silver bullion and the other assets that would comprise the remaining holdings of the Trust; (2) the ability of the Exchange to obtain information regarding trading in gold and silver futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA, including COMEX; (3) the calculation and dissemination of NAV and IIV for the Units; and (3) updates with respect to the Arrangement. These changes assisted the Commission in evaluating the Units' susceptibility to manipulation, and in determining that the listing and trading of the Units is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>70</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>71</sup> that the proposed rule change (SR-NYSEArca-2017-131), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>70</sup> 15 U.S.C. 78s(b)(2).

<sup>71</sup> Id.

<sup>72</sup> 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-00307 Filed: 1/10/2018 8:45 am; Publication Date: 1/11/2018]